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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL ABORTION FEDERATION (NAF),

Case No. 3:15-cv-3522-WHO

Plaintiff,

**NATIONAL ABORTION
FEDERATION (NAF)'S AMENDED
ADMINISTRATIVE MOTION TO
FILE CERTAIN DOCUMENTS
UNDER SEAL (REPLACING DKT.
NO. 58)**

v.

16 THE CENTER FOR MEDICAL PROGRESS,
17 BIOMAX PROCUREMENT SERVICES LLC,
18 DAVID DALEIDEN (aka "ROBERT SARKIS"),
19 and TROY NEWMAN,

Defendants.

Date Action Filed: July 31, 2015
Trial Date:

1 Pursuant to Civil L.R. 7-11 and 79-5 and in accordance with the Court's Order re Motion
 2 to Clarify TRO and Motion to Seal (Dkt. No. 64), Plaintiff National Abortion Federation ("NAF")
 3 respectfully submits this Amended Administrative Motion To File Certain Documents Under Seal
 4 (Replacing Dkt. No. 58), requesting leave of Court to file under seal NAF's Motion for an Order
 5 to Show Cause Why Defendants The Center For Medical Progress and David Daleiden (aka
 6 "Robert Sarkis") Should Not Be Held in Contempt ("Motion") (Dkt. No 58-3), Exhibit 1 to
 7 NAF's Motion for Order to Show Cause (Dkt. No. 58-6), Defendants' Motion to Clarify
 8 Temporary Restraining Order and documents submitted in support (Dkt. Nos. 57, 57-3, and 57-4),
 9 as well as Exhibits 5 and 18 to the Declaration of Derek F. Foran in Support of NAF's Motion for
 10 Temporary Restraining Order and Preliminary Injunction ("Foran Declaration"). (Dkt. Nos. 3-7
 11 and 3-20.)

12 **REQUIRED CERTIFICATIONS**

13 Pursuant to the Court's Standing Order of Administrative Motions to File Under Seal,
 14 NAF makes the following statements:

15 NAF certifies that it has reviewed and complied with the Court's Standing Order of
 16 Administrative Motions to File Under Seal.

17 NAF certifies that it has reviewed and complied with Civil Local Rule 79-5.

18 NAF identifies the documents to be sealed as follows:

- 19 • Docket No. 58-3 (NAF's Motion for an Order to Show Cause Why Defendants
 20 The Center For Medical Progress and David Daleiden (aka "Robert Sarkis")
 21 Should Not Be Held in Contempt);
- 22 • Docket No. 58-6 (Exhibit 1 to NAF's Motion for Order to Show Cause);
- 23 • Docket No. 57 (Defendants' Motion to Clarify Temporary Restraining Order);
- 24 • Docket No. 57-3 (August 7, 2015 Letter Between Derek Foran and Brian Chavez-
 25 Ochoa);
- 26 • Docket No. 57-4 (August 10, 2015 Letter Between Catherine Short and Derek
 27 Foran);
- 28 • Docket No. 3-7 (Exhibit 5 to the Declaration of Derek F. Foran in Support of

1 NAF's Motion for Temporary Restraining Order and Preliminary Injunction); and
 2 • Docket No. 3-20 (Exhibit 18 to the Declaration of Derek F. Foran in Support of
 3 NAF's Motion for Temporary Restraining Order and Preliminary Injunction).

4 NAF identifies that it is the entity that will designate the materials to be sealed as
 5 confidential. NAF identifies that the above documents should be filed under seal because they
 6 are comprised of confidential material that is subject to the Court's Order granting NAF's motion
 7 for a temporary restraining order. NAF certifies that it has provided all other material required by
 8 the Local Rule, including courtesy copies in the correct format.

9 **ARGUMENT**

10 The Ninth Circuit has held that the presumption of access to judicial records does not
 11 apply where the documents at issue are being filed in connection with a non-dispositive motion.
 12 *See In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir.
 13 2012) (recognizing an exception to the presumption of access to judicial records in the context of
 14 non-dispositive motions, and stating that, “[u]nder the exception, the usual presumption of the
 15 public's right of access is rebutted” (citation and internal quotation marks omitted)). In such
 16 circumstances, the appropriate legal standard is “good cause” and the court may issue “any order
 17 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or
 18 undue burden or expense.” *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th
 19 Cir. 2006) (citing Fed. R. Civ. P. 26(c)).

20 Here, there is no question that NAF's Motion for an Order to Show Cause (“Motion”) is
 21 not a dispositive motion, and that the “good cause” standard therefore applies. As described
 22 below, this standard is easily met because of the interest in protecting individuals from
 23 harassment and threats to their safety.

24 **I. THE COURT ALREADY DETERMINED THAT THE INFORMATION AT ISSUE
 25 WARRANTS PROTECTION WHEN IT ISSUED THE TRO.**

26 NAF seeks to file its Motion and accompanying exhibits under seal, as well as the exhibits
 27 in support of the Foran Declaration. Portions of those papers describe and reveal highly
 28 confidential information that is subject to the parties' confidentiality agreements and the Court's

1 Temporary Restraining Order (“TRO”). *See, e.g., Phillips ex rel. Estates of Byrd v. Gen. Motors*
 2 *Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002) (recognizing that, where a court has previously
 3 prevented public access to certain materials, this weighs in favor of a finding that good cause
 4 exists to grant a sealing motion). Other portions identify websites and articles relating to NAF
 5 members that, if not sealed, would reveal the identities of NAF members subject to the TRO.
 6 (See also Dkt. 67 at 2.) Filing these documents in the public record would defeat the purpose of
 7 the Court’s TRO, which enjoins Defendants from “publishing or otherwise disclosing to any third
 8 party any video, audio, photographic, or other recordings taken, or any confidential information
 9 learned, at any NAF annual meetings,” (Dkt. No. 27 at 1:20-21) as well as from “publishing or
 10 otherwise disclosing to any third party the names or addresses of any NAF members learned at
 11 any NAF annual meetings.” (*Id.* at 1:24-25.)

12 **II. SEALING IS NECESSARY TO PREVENT HARASSMENT, INTIMIDATION,**
 13 **VIOLENCE, AND INVASION OF PRIVACY TOWARDS INDIVIDUALS**
IDENTIFIED IN NAF’S MOTION.

14 As discussed in the Declaration of Vicki Saporta in support of National Abortion
 15 Federation (NAF)’s Motion for a Temporary Restraining Order and Preliminary Injunction (Dkt.
 16 No. 3), the information that Defendants are publicizing—including the information learned from
 17 NAF’s annual meetings that is the subject of this Motion to Seal—constitute a threat to the safety
 18 and security of the attendees of NAF’s meetings. (Dkt. No. 3-34 (“Saporta Decl.”) ¶ 19.) Many
 19 of NAF’s members have been targeted by anti-abortion extremists. (*Id.* ¶ 15.) They have been
 20 stalked, threatened, and intimidated, including being picketed at their homes, churches, and their
 21 children’s schools. (*Id.*) Some members have had death threats made against them, and bomb
 22 threats made against their clinics. (*Id.*) Others are forced to wear bullet-proof vests to work.
 23 (*Id.*) Attendees have had their names put on threatening “wanted” posters and websites featuring
 24 their photos and personal information that are intended to incite violence against them. (*Id.*)
 25 Websites (such as <http://www.christiangallery.com/atrocity/aborts.html>) continue to tout attacks
 26 on abortion providers, complete with graphical depictions of dripping blood, lists of attacks on
 27 providers (“Aborted and Nearly Aborted Abortionists”), lists of future targets (“Blood Flunkys”),
 28 and calls for more targets (“SEND US MORE NAMES!”). (Decl. of Christopher L. Robinson in

1 Supp. of NAF's Amended Admin. Mot. to File Under Seal ¶ 6.)¹

2 Because of this extreme violence perpetrated against NAF and its members, NAF goes to
 3 great lengths to protect the discussions that take place at its meetings. This violence has forced
 4 NAF to adopt broad security and privacy measures at its annual meetings in order to protect the
 5 content of NAF meetings. These measures include, among other things, providing extensive
 6 security at meetings as well as requiring that attendees sign nondisclosure agreements, which
 7 forbid them from taking photographs, making recordings, or sharing information learned at NAF
 8 meetings with third parties. (Saporta Decl. ¶¶ 6-13.)

9 Notably, individuals who are mentioned in the videos and transcripts that Defendants have
 10 posted—like the individuals whose identities and conversations are at issue in this Motion to
 11 Seal—have become targets of anti-abortion extremist violence. Anonymous internet posts have
 12 leveled death threats against the CEO of a lawful tissue procurement organization, StemExpress,
 13 who was named in the Nucatola video. These threats called the person in question “a death-
 14 profiteer” who “should be hung by the neck using piano wire and propped up on the lawn in front
 15 of the building with a note attached” (*Id.* ¶ 19.) The person posting went on to identify
 16 where the CEO lives and stated: “I’m going there . . . I’ll pay ten grand to whomever beats me to
 17 [CEO] . . . [CEO] must die to save the innocents.” (*Id.*)

18 In addition, there is evidence that anti-abortion activists are closely watching the filings in
 19 this case. Since this suit was filed, numerous references to this case have appeared online,
 20 including within blogs, Twitter, and message boards. As one example, a blog post titled “NAF’s
 21 Suit Against The Center For Medical Progress Is A Goldmine” calls for readers to “crowd-source
 22 our fellow-traveler’s case” and “flood social media with mockery of NAF’s self-damning
 23 assertions.” (Robinson Decl. ¶ 4.) It identifies named counsel for NAF and states “This is your
 24 Adversary. Will you rise to the occasion?” (*Id.*) Facebook posts about this case—and this

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 26 ¹ At least one court has found that this website, standing alone, would justify refusing to
 27 grant relief to counsel for Daleiden/CMP/Biomax, in a Public Records Act suit that sought the
 28 names of physicians, clinicians and stakeholders who participated in a health workplace pilot
 project at UCSF. *Life Legal Defense Foundation v. Univ. of Cal. Bd. of Regents*, RG12-625716
 (May 17, 2012) (attached as Ex. 1 to Robinson Decl.)

1 Court— are also disturbing. (*Id.* ¶ 5.)

2 As explained in more detail in the accompanying Declaration of Christopher L. Robinson
3 in support of this motion, NAF’s sealing request is “narrowly tailored to seek sealing only of
4 sealable material,” as Local Rule 79-5(b) requires. There is no need to disclose to the public the
5 granular details of the issues specific to NAF’s and Defendants’ motions or the exhibits in
6 support. Indeed, the purpose of NAF’s Motion for an Order to Show Cause and accompanying
7 exhibits is to address Defendants’ continuing publication of materials in a manner that runs afoul
8 of the Court’s Temporary Restraining Order. NAF’s request to file these documents under seal
9 serves to protect NAF and its members from additional harm, without hindering the public’s
10 understanding of the issues in this case.

11 Because public disclosure of the information contained in the above referenced documents
12 would cause NAF and its members continuing substantial harm, the “good cause” standard is
13 readily satisfied. Accordingly, NAF respectfully requests that the Court grant its motion to seal.

14 Dated: August 18, 2015

15 CHRISTOPHER L. ROBINSON
MORRISON & FOERSTER LLP

16 By: /s/ Christopher L. Robinson
Christopher L. Robinson

17 Attorneys for Plaintiff
18 NATIONAL ABORTION FEDERATION

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